

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KYLE HARDY,

Plaintiff,

-against-

HW & B, LLC,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/23/2020

7:16-CV-8353 (NSR)

ORDER

NELSON S. ROMÁN, United States District Judge

Plaintiff Kyle Hardy commenced this action against Defendant asserting breach of contract claims on October 27, 2016. (ECF No. 1.) By Order to Show Cause (“OSC”), dated March 13, 2020, the Court directed Plaintiff to show cause on or before March 26, 2020, why the action should not be dismissed without prejudice for want of prosecution pursuant to Federal Rule of Civil Procedure 41(b) (“Rule 41(b)”). To date, Plaintiff has not responded.

A review of the docket reveals Plaintiff has taken little action to prosecute his claims since the action was commenced in October 2016. Moreover, despite the passage of more than seven months, Plaintiff has failed to respond to the Court’s OSC. When determining whether to dismiss an action pursuant to Rule 41(b), courts have considered whether: (1) plaintiff’s failure to prosecute caused a delay of significant duration; (2) plaintiff was given notice that further delay would result in dismissal; (3) defendant was likely to be prejudiced by further delay; (4) the need to alleviate court calendar congestion was carefully balanced against plaintiff’s right to an opportunity for a day in court; and (5) the trial court adequately assessed the efficacy of lesser sanctions. *U.S. ex rel. Drake v. Norden Sys., Inc.*, 375 F.3d 248, 254 (2d Cir. 2004) (internal citations omitted). No one factor is determinative. *Id.* (citing *Peart v. City of New York*, 992 F.2d 458, 461 (2d Cir. 1993)). Having considered the relevant factors, the Court determines that dismissal of the action is warranted. Plaintiff’s delays have been significant in duration and Plaintiff has failed to

communicate with the Court since October 2016 (approximately four years ago). Accordingly, it is hereby Ordered that the action is DISMISSED without prejudice for failure to prosecute.

The Clerk of the Court is respectfully directed to terminate the action and serve a copy of this Order upon the Plaintiff at his last known residence, and to show proof on the docket.

Dated: October 23, 2020
White Plains, New York

SO ORDERED:

A handwritten signature in dark ink, appearing to read 'Nelson S. Román', is written over a horizontal line.

NELSON S. ROMÁN
United States District Judge